

FACTS AND PRIOR PROCEEDINGS²

Plaintiff filed his application on May 10, 2005, alleging disability beginning May 1, 2003. AR 26-27, 88. His application was denied initially (AR 73-79) and on reconsideration AR 62-72. Thereafter, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). AR 57. ALJ Stanley R. Hogg, held a hearing on May 14, 2008, and issued an order denying benefits on July 17, 2008. AR 15-25, 28-37. Plaintiff requested a review of the decision. On August 13, 2008, the Appeals Council denied review. AR 5-14.

Hearing Testimony

ALJ Hogg held a hearing on May 14, 2008, in Redding, California. Plaintiff appeared and testified. He was represented by attorney Steven Burniker. AR 219-243.

Plaintiff was thirty two years old on the date of the hearing. AR 222. He completed the Twelfth grade; however, he received special education services throughout high school. AR 223. Plaintiff was placed in special education classes for his entire academic life. *Id.* He has difficulty reading, writing, and following instructions. AR 223, 229-230. Plaintiff was incarcerated from 2001 to 2003. AR 227-228.

Plaintiff lives in Corning, California. AR 238-239. He is not married, but has two children. *Id.* He lives with his fiancé, his daughter, his grandparents and his fiancé’s grandparents. *Id.* His other daughter lives with Plaintiff’s mother and father, whose residence is unknown. AR 238. AR 26-27.

For fun, Plaintiff spends time with his daughter and plays videos games. AR 239. He does not read or own a computer. AR 223. He spends must of his time at his house because he does not have any friends. AR 239. He does not like interacting with other people in social settings and mainly goes to fast food restaurants when dinning out. AR 239-240. He does not have a driver’s license and is dependent on his girlfriend or another acquaintances for transportation. AR 239. He goes grocery shopping with his girlfriend and daughter, but he tries to stay in the car while they shop. AR 240. Plaintiff does yard work, such as cleaning and

² References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 pulling weeds. AR 232-233, 239. He has also preformed construction work on his house. AR
2 232

3 Plaintiff last worked in 2004 as a cook at a Kentucky Fried Chicken (“KFC”) for one
4 week. AR 224, 230-232. He was terminated for walking off the job site after he got into an
5 argument with a manager because he was unable understand instructions on how to properly
6 bread the various types of chicken. AR 224, 230-231. Plaintiff has not submitted any
7 applications for work since his termination from KFC. AR 237

8 A year prior to working at KFC, Plaintiff worked in a camp processing salmon in Alaska.
9 AR 224-225. He worked there for one month but was terminated for smoking a cigar in a non-
10 smoking area. AR 225. The longest job Plaintiff has held was for five months working
11 construction in an oil field. AR 225-226. His job duties included transporting pumps and parts,
12 and generally assisting other workers as a “helper.” AR 226. This type of work was very labor
13 intensive, and required Plaintiff to lift 100 pounds. AR 226, 242. Plaintiff was terminated
14 because he got into an argument with his boss because he did not follow instructions. AR 226.

15 Plaintiff has stabbing pain in his lower back when he breathes. AR 234. He experiences
16 this two to three times a week, with an episode generally lasting half a day. AR 234-235. He has
17 been treated for back pain and has had it a long time. AR 233. Plaintiff takes Naprosyn to
18 manage his pain, which offers only slight relief. AR 235. On a scale of one to ten, Plaintiff rates
19 his back pain as a ten without medication, and a seven or eight with medication. *Id.*

20 Plaintiff can lift one hundred plus pounds if it is required of him. AR 235. He can walk
21 between one half mile and a mile in twenty to twenty-five minutes. *Id.* He can stand for twenty
22 to twenty-five minutes, but he experiences shooting pain in his heels. AR 236. He has difficulty
23 sitting due to back pain, but he can sit for half-hour to an hour and can bend without much
24 difficulty. AR 236-237.

25 Dr. Rehman, Plaintiff’s primary care physician, sent Plaintiff to a neurologist for his back
26 pain. The neurologist diagnosed Plaintiff with tendonitis. AR 241. Some additional testing was
27 completed but Plaintiff had not received the results at the time of the hearing. *Id.* He was
28 referred to another specialist by the neurologist. *Id.*

1 In addition to his back Pain, Plaintiff suffers from depression and he has anger issues.
2 AR 233, 237. Plaintiff saw a psychiatrist for two sessions. AR 228, 237-238. His treatment was
3 terminated because the psychiatrist did not believe Plaintiff was a candidate for counseling and
4 he suggested Plaintiff try hypnotism. AR 237-238 The psychiatrist did not prescribe any
5 medication. AR 237. However, Plaintiff is currently taking Restoril, which was prescribed by
6 Dr. Rehman. AR 237. Plaintiff had previously taken Seroquel, but Dr. Rehman terminated his
7 medication because it was not effective and was causing liver damage. *Id.*

8 Plaintiff indicated he had an appointment in a few months to see another psychiatrist so
9 that his medication could be evaluated. AR 242-243. The ALJ informed both Plaintiff and
10 counsel that he would not be able to hold the record open that long, at which time counsel
11 responded, “[r]ight.” AR 243.

12 **Medical Record**

13 The entire medical record was reviewed by the Court. Those records relevant to the
14 issues on appeal are summarized below.

15 ***Sid Cormier, Ph.D.***

16 On July 12, 2005, Clinical Psychologist Sid Cormier Ph.D., preformed a consultative
17 examination at the request of Department of Social Security to determine Plaintiff’s eligibility for
18 disability benefits. AR 154-163.

19 Dr. Cormier determined Plaintiff was “completely functionally illiterate” and that
20 Plaintiff’s girlfriend had to assist him in completing the history questionnaire. Although Plaintiff
21 denied being under the influence of mind altering drugs or alcohol at the time of the examination,
22 he admitted to smoking marijuana daily. While no physical discomfort was obvious, Dr.
23 Cormier observed obvious psychological distress, and Plaintiff demonstrated a combination of
24 verbal and nonverbal behavior consistent with a mixture of hostility, depression and moderate
25 anxiety. Plaintiff was credible but needed reminders to exert his best efforts while testing.
26 Plaintiff described his mood as typically angry because he usually feels mad at the world.
27 Further, he reported difficulty falling and staying a sleep. Based on Plaintiff’s own personal
28 description and behavior, Dr. Cormier indicated that Plaintiff personified a moderately low

1 energy level. However, Plaintiff did not experience any hallucinations or delusions. Dr.
2 Cormier's diagnosed Plaintiff with cannabis abuse, and possibly an unspecified depressive
3 disorder with clear indications of a reading and writing disorder. AR 154-155.

4 During testing, Plaintiff indicated that he is capable of showering and dressing himself,
5 shopping, preparing meals, and providing some care for his living situation. However, he did not
6 have a driver's license because he lost it for excessive speeding. He also does not pay any bills.
7 Plaintiff described spending a typical day watching television and going outside. AR 155.

8 Dr. Cormier opined that Plaintiff was marginally alert, but that he was grossly oriented to
9 person, place, time, and situation, and his ability of perception was a "bit patchy." Dr. Cormier
10 could not rule out the possibility that Plaintiff was under the residual effects of long term
11 cannabis abuse. Plaintiff's thought process flowed at a slower lethargic fashion, which was
12 consistent with mild psychomotor retardation. Plaintiff's mood appeared to be a mixture of
13 depression, anger, anxiety, and a "guarded affective quality." AR 156. His concentration
14 capacity was significantly impaired. Plaintiff's abstract thinking ability was below average.
15 Both his long-term and working memory appeared to be significantly impaired. Plaintiff's
16 vocabulary was borderline and arithmetic reasoning skills were marginal. However, Plaintiff's
17 judgement was basically intact and he seemed to have a fundamental grasp of the consequences
18 of his own and other people's behavior. Based on Plaintiff's vocabulary, word usage, recorded
19 history, and ability to conceptualize, Dr. Cormier indicated that Plaintiff had borderline
20 intellectual functioning. AR 156.

21 On the Wechsler Adult Intelligence Scale III, Plaintiff's verbal IQ score was 71,
22 Performance IQ score was 76, and his full-scale score was 71. Dr. Cormier found that Plaintiff's
23 current level of functioning was within the lower end of the borderline range, which equaled or
24 surpassed the performance of only three percent of people his age that took the test. AR 157. On
25 the Wechsler Memory Scale, Plaintiff was found to be below average in immediate and delayed
26 memory functioning and borderline in working memory functioning. Plaintiff's Global
27 Assessment of Functioning score was 55. Further, Plaintiff would likely have some significant
28 impairment in complex memory processing. AR 157-158.

1 Formal memory testing indicated that Plaintiff is probably capable of accepting and
2 remembering simple instructions, but not complex instructions. Plaintiff also demonstrated
3 obvious impairments regarding sustained concentration, persistence, and pace. His ability to
4 complete a normal workday or workweek without interruption may be significantly impaired at
5 times because of his borderline intellectual functioning, learning disabilities, and cannabis
6 induced anxiety. Plaintiff's history and response to stress of the examination suggested that he
7 has a moderate impairment regarding his ability to deal with the typical stress in a competitive
8 work setting. He has significant impairments with his ability to interact with co-workers and the
9 general public, and would likely need an additional or special supervisor. Although Plaintiff's
10 borderline intellectual functioning and cannabis related problems may impair his ability to
11 preform complex or detailed tasks, it probably would not impair his ability to perform repetitive
12 tasks. Additionally, Plaintiff did not have a psychological condition that would impair his ability
13 to maintain regular attendance or perform simplistic work activities. AR 159.

14 Dr. Cormier concluded that Plaintiff is marginally functional outside of a moderately
15 supportive situation, but that his functional capacity may significantly improve if he were to
16 discontinue his ongoing cannabis abuse and seek professional psychiatric and psychological
17 assistance. AR 159.

18 ***Rajeswari Kumar, M.D.***

19 On July 16, 2005, state consultative examiner Rajeswari Kumar M.D., a board-certified
20 physician in rehabilitation and pain medicine, preformed a complete orthopedic evaluation.
21 Plaintiff's chief complaints were a history of left shoulder pain, low back pain, knee pain, and
22 chest pain. Dr. Kumar found no precipitating trauma that would result in Plaintiff's pain. *Id.*
23 Plaintiff reported he was seen by a chiropractor in 1995 and 1996 when he had x-rays taken and
24 was diagnosed with a deformity of the spine.³ Plaintiff denied having any surgery or other
25 treatment, and indicated that he does not take any medication for pain relief. Plaintiff described
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28 ³ No records from the chiropractor or associated x-rays were submitted.

1 the pain in his lower back as constant and radiating, and the pain in his left knee and shoulder as
2 constant. Plaintiff also complained of intermittent numbness in his left leg. AR 148-152.

3 The physical examination revealed Plaintiff's range of motion in his shoulders, elbows,
4 wrists, hands, hips, knees, and ankles were all normal, with no tenderness or swelling. Plaintiff's
5 neurologic examination showed normal muscle strength and normal sensation in his upper and
6 lower extremities. Dr. Kumar was unable to ascertain evidence of scoliosis or other spinal
7 deformity and opined that there were no functional limitations and no objective findings to
8 support Plaintiff's multiple subjective complaints. AR 150-151.

9 ***Robert B. Paxton, M.D.***

10 On August 27, 2005, state agency consulting physician, Dr. Robert B. Paxton completed a
11 mental residual functional capacity assessment. Dr. Paxton found that Plaintiff did not have a
12 medical impairment, but that his ability to understand, remember and carry out detailed
13 instructions, and interact with the general public were all moderately impaired. Dr. Paxton
14 indicated that Plaintiff had mild limitations in activities of daily living, mild limitations regarding
15 difficulties in maintaining social functioning, as well as in maintaining concentration, persistence
16 or pace. Plaintiff also had one to two episodes of decompensation. AR 166-179. However, Dr.
17 Paxton found that Plaintiff's ability to work within an ordinary routine without supervision, to
18 get along with co-workers, and complete a normal workday and workweek with interruption
19 were all not significantly limited. All other assessments areas were not significantly limited. AR
20 160-161. On March 2, 2006, board certified psychiatrist, Alan R. Schrif M.D. reviewed
21 Plaintiff's medical records and affirmed Dr. Paxton's assessment. AR 166.

22 ***Richard C. Dann, M.D.***

23 On February 6, 2006, state agency physician, Dr. Richard C. Dann opined that Plaintiff
24 had many subjective complaints, but there was no objective evidence in support of his claims and
25 Plaintiff had no serve physical impairments. AR 165. Plaintiff did not have any tenderness,
26 spasms of the cervical or lumbar spine. AR 165. His range of motion in his shoulders and knees
27 and his gait were all normal. AR 164. Dr. Dann found Plaintiff to be partially creditable. He
28 described Plaintiff as a young man with very little work history and zero motivation who abuses

1 cannabis on a daily basis. Dr. Dann found Plaintiff capable of performing simple repetitive
2 tasks. AR 164-165.

3 ***Syed Rehman M.D.***

4 On May 14, 2007, Dr. Syed Rehman, Plaintiff's primary treating physician, at Del Norte
5 Clinics, examined Plaintiff. Plaintiff complained of middle to lower back pain, blurry vision,
6 and frequent heat stroke that occurs when he does manual labor which causes him to feel dizzy
7 and light headed. Plaintiff admitted that he had not seen a doctor for any of his problems and
8 that he takes Ibuprofen to manage his pain. AR 190.

9 Dr. Rehman's physical examination did not reveal any tenderness in Plaintiff's neck, legs,
10 thighs, or hips areas. Range of motion in Plaintiff's shoulders, arms, and elbows all appeared to
11 be normal. Plaintiff exhibited tenderness in the mid and lower spine, but there was no swelling.
12 External and internal rotation of both hips appeared normal. However, Plaintiff had weak hand
13 grips on both sides which appeared to be more from a lack of effort than any underlying muscle
14 weakness. AR 191. Dr. Rehman opined that Plaintiff had chronic pain syndrome with lower
15 back pain, and that the tenderness in Plaintiff's back was very dramatic and worrisome. Plaintiff
16 was also found to have limited bilateral hip pain. Plaintiff was prescribed 7.5 mg of Meloxicam
17 to treat his pain. Dr. Rehman noted that Plaintiff wanted to be on social security disability. *Id.*

18 On September 12, 2007, Plaintiff returned for a follow-up examination. Plaintiff
19 continued to complain of significant lower back pain, bilateral hip pain, as well as numbness and
20 weakness in the right arm. He also complained of depression, and that he gets frustrated and
21 angry. Dr. Rehman opined that despite Plaintiff's complaints of pain there was no evidence of
22 radiculopathy. Plaintiff reported that he took Ibuprofen and OxyContin because he could not
23 tolerate Meloxicam. Dr. Rehman diagnosed Plaintiff with depression and bipolar disorder.
24 Plaintiff also had numbness in his right hand, however, a complete neurological examination was
25 unremarkable. Plaintiff was prescribed Seroquel and Naprosyn. Dr. Rehman recommended x-
26 rays of Plaintiff's spine and hip areas. He also referred Plaintiff to a neurologist for a
27 consultation. Dr. Rehman indicated that the physical examination was normal. AR 200.

1 On September 19, 2007, Plaintiff returned again complaining of significant back pain and
2 back and leg spasms. The physical examination was unremarkable. X-rays of Plaintiff's cervical
3 and thoracic spine, and left hip were normal. Images of the lumbar spine showed small
4 osteophyte on the superior endplate of the anterior aspect of L4, but were otherwise normal. The
5 right hip showed an osseous density adjacent to the femoral neck, otherwise the joint appeared
6 unremarkable. Plaintiff's hip examination was also normal. Numbness persisted in Plaintiff's
7 right hand and he had abnormal liver enzymes. Plaintiff was again prescribed Seroquel to treat
8 his depression and anger. Plaintiff was also prescribed Baclofen. AR 199.

9 On October 12, 2007, Plaintiff was seen by Marilyn Slater, a Family Nurse Practitioner at
10 the Del Norte Clinics. Plaintiff reported he had four to five seizures while sleeping two nights
11 ago. Plaintiff also complained that the Naprosyn upset his stomach and caused a burning
12 sensation in his mid-chest. As a result, the Naprosyn was discontinued, and Plaintiff was
13 prescribed Celebrex and Omeprazole. Ms. Slater indicated that Plaintiff was to follow-up with
14 Dr. Rehman regarding an "EKG" done prior to her examination that revealed a "right bundle-
15 branch block on 1 tracing and a bifascicular block on the second tracing." AR 198.

16 On December 11, 2007, Plaintiff had a follow-up appointment with Dr. Rehman.
17 Plaintiff continued to complain of chronic low back pain and reported that his hip locked up three
18 weeks previously and he was unable to move. Plaintiff disclosed that he went to the emergency
19 room⁴, was given an injection, and was sent home with a prescription for Norco. Dr. Rehman
20 diagnosed Plaintiff with chronic pain syndrome with low back pain and bilateral hip pain. X-rays
21 of Plaintiff's lumbar spine revealed signs of very early degenerative disc disease at "L4-L5." AR
22 196. However, Dr. Rehman indicated that this was "questionable." *Id.* Dr. Rehman opined that
23 pain in Plaintiff's right wrist appeared to suggest he suffers from de Quervain's tenosynovitis and
24 he was referred to Dr. Hayes, an orthopedic specialist. AR 196. Plaintiff's bipolar disorder was
25 still present because Dr. Rehman indicated that he was not taking any medication to treat it at this
26 time. Dr. Rehman discontinued the Seroquel due to abnormal liver functioning, and changed
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28 ⁴ No records of this emergency room visit were submitted.

1 Plaintiff's prescription to Risperdal. *Id.* Plaintiff also requested a refill of his Norco
2 prescription. *Id.*

3 On January 30, 2008, Plaintiff was seen at a follow-up appointment. Plaintiff's
4 complaints continued to consist of significant pain in his back, both legs and both knees.
5 Another series of x-rays of Plaintiff's hips were unremarkable. Plaintiff indicated that he had
6 been taking his prescribed medicine, which consisted of Risperdal, Baclofen and Naprosyn, but
7 that they were not effective at reducing his pain. Plaintiff was unable to see Dr. Hayes the
8 orthopedic specialist because Dr. Hayes did not accept Medi-Cal patients. The physical
9 examination revealed that Plaintiff was still in "bad physical shape" and he had an "offensive
10 body odor." Plaintiff was diagnosed with chronic pain syndrome, although, Dr. Rehman
11 indicated that this was probably psychological pain. Plaintiff's bipolar disorder was treated with
12 Risperdal, which enabled him to sleep through the night. AR 195.

13 ***Matthew Merliss, M.D.***

14 On December 5, 2007, Matthew Merliss, M.D., at Glenn Medical Center, performed a
15 nerve conduction study and an EMG of Plaintiff's right hand, at the request of Dr. Rehman. The
16 nerve conduction study showed normal sensory studies of the right hand, and the EMG revealed
17 a normal electromyogram of the right hand, with normal "insertional" activity in all muscles
18 tested. AR 194. Dr. Merliss indicated that Plaintiff had tenderness over the extensor tendon of
19 his right thumb with a positive Finklestein's test. As a result, Dr. Merliss hypothesized that
20 Plaintiff had de Quervain's syndrome in his right wrist. Dr. Merliss ordered MRI's of Plaintiff's
21 hips due to popping in both hips. AR 197.

22 On March 18, 2008, Dr. Merliss examined Plaintiff again. Dr. Merliss indicated that
23 Plaintiff may suffer from de Quervain's tenosynovitis in his right wrist, but the results of the hip
24 MRI were still outstanding. The examination revealed a "weakly positive" Finkelstein test in his
25 right hand, and a "weakly positive" Patrick's test on Plaintiff's right hand. AR 193. He also
26 reiterated the need for Plaintiff to be seen by an orthopedist. *Id.*

27 On October 15, 2008, Dr. Merliss filled out a "Medical Source Statement of Ability to do
28 Work-Related Activities" for Plaintiff. Dr. Merliss indicated Plaintiff could lift and carry up to

ten pounds continuously and eleven to fifty pounds frequently, but could never lift or carry 51 to 100 pounds. AR 212. Plaintiff could sit for three hours without interruption, stand for four to five hours, and walk four to five hours. During an eight hour workday, Plaintiff could sit, stand and walk for five hours. Use of a cane was noted "as needed" due to pain. Plaintiff's use of his right hand consisted of occasional reaching overhead, handling, fingering, feeling, and pushing/pulling. Plaintiff was able to perform all other reaching activities with his right hand frequently. AR 213. Plaintiff's use of his left hand consisted of occasional reaching, fingering, feeling, and push/pulling, with frequent use of his left hand for handling. Plaintiff could use both feet frequently. AR 214. For postural activities, Plaintiff could occasionally climb stairs, ramps and ladders, balance, stoop, and kneel. However, Plaintiff could never crouch or crawl. AR 215.

Dr. Merliss also indicated various environmental limitations. Plaintiff could occasionally tolerate unprotected heights, moving mechanical parts, and the operation of a motor vehicle. However, Plaintiff could never tolerate humidity and wetness, dust, odors, fumes and other pulmonary irritants, or extreme heat and cold. Dr. Merliss indicated that Plaintiff would work best in a quiet setting and that Plaintiff could not travel without a companion for assistance, nor could he sort, handle or use paper and files. AR 216-217.

Phyllis Cullen, M.D.

On April 14, 2008, Phyllis Cullen M.D. injected an epidural steroid in Plaintiff's back. The physical examination revealed Plaintiff's motor strength was symmetrical and within normal limits. His range of motion was mildly restricted due to pain during extreme rotation and extension of his cervical spine. "Flexion" in Plaintiff's lumbar spine was also painful. However, rotation and "flexion" in his shoulders and hips were normal and painless. Plaintiff showed no abnormal movements. Plaintiff exhibited tenderness at "spinous process," ligaments, and muscles. AR 210. Dr. Cullen's impression was that Plaintiff suffered from degenerative disk disease. *Id.* Additionally, Dr. Cullen indicated that Plaintiff appeared to be depressed and unmotivated to exercise, which was causing muscle shortening and weakness. *Id.* He recommended that Plaintiff participate in an exercise program and seek psychological help in conjunction with antidepressants. *Id.*

ALJ's Findings

The ALJ found that Plaintiff had not engaged in substantial gainful activity since May 10 2005, and had severe impairments including: depression, oppositional defiant disorder and borderline intellectual functioning. AR 20. Nonetheless, the ALJ determined that Plaintiff's severe impairments did not meet or exceed one of the listed impairments. AR 21.

Based on his review of the medical evidence, the ALJ determined that Plaintiff did not have any impairments based on any exertional limits on his ability to perform work. AR 22. The ALJ found that Plaintiff was restricted to simple, routine, and unskilled tasks that did not involve frequent dealings with the public or co-workers, but occasional dealings were not precluded. *Id.* Accordingly, the ALJ determined that Plaintiff was not able to perform any past relevant work. AR 24. However, given Plaintiff's RFC, the ALJ applied the Medical-Vocational Rules ("the grids") and determined that Plaintiff could perform a significant number of jobs in the national economy. *Id.* Therefore, Plaintiff was not disabled as defined by the act. AR 25.

SCOPE OF REVIEW

Congress has provided a limited scope of judicial review of the Commissioner's decision to deny benefits under the Act. In reviewing findings of fact with respect to such determinations, the Court must determine whether the decision of the Commissioner is supported by substantial evidence. 42 U.S.C. § 405 (g). Substantial evidence means "more than a mere scintilla," *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The record as a whole must be considered, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*, *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner's determination that the claimant is not disabled if the Secretary applied the proper legal standards, and if the Commissioner's findings are supported by

substantial evidence. *See Sanchez v. Sec'y of Health and Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

REVIEW

In order to qualify for benefits, a claimant must establish that he is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. § 1382c (a)(3)(A). A claimant must show that he has a physical or mental impairment of such severity that he is not only unable to do her previous work, but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990).

In an effort to achieve uniformity of decisions, the Commissioner has promulgated regulations which contain, inter alia, a five-step sequential disability evaluation process. 20 C.F.R. §§ 404.1520 (a)-(f), 416.920 (a)-(f). Applying this process in this case, the ALJ found that Plaintiff: (1) had not engaged in substantial gainful activity since May 10, 2005, the day of his application; (2) has an impairment or a combination of impairments that is considered “severe” based on 20 C.F.R. § 416.920(c); (3) does not have an impairment or combination of impairments which meets or equals one of the impairments set forth in 20 CFR Part 404, Subpart P, Appendix 1(20 C.F.R. §§ 416.920(d), 416.925 and 416.926); (4) could not perform his past relevant work; but (5) could perform jobs that exist in significant numbers in the national economy. AR 13-20.

Here, Plaintiff argues that: (1) the Appeals Council failed to consider evidence submitted after the ALJ issued the decision; (2) the ALJ failed to provide clear and convincing reasons to reject Plaintiff’s subjective pain limitations; (3) the ALJ failed to provide clear and convincing reasons to reject the opinions of Plaintiff’s treating physicians; (4) the ALJ failed to consider the limitations imposed by the psychological consultative examiner; and (5) the ALJ’s reliance on the grids in lieu of testimony by a vocational expert was improper.

DISCUSSION

A. New Evidence

Plaintiff argues that the Appeals Council did not properly consider the Medical Source Statement of Ability to do Work-Related Activities prepared Dr. Merliss on October 15, 2008. (Doc. 14 at 10). Defendant responds that the Appeals Council properly considered the opinion and that the new evidence was not material. (Doc. 15 at 7).

The regulations explain Appeals Council review when new and material evidence is submitted:

If new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. The Appeals Council shall evaluate the entire record including the new and material evidence submitted if it relates to the period on or before the date of the administrative law judge hearing decision. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

20 C.F.R. 404.970(b).

In addition, this Court must consider evidence added to the record by the Appeals Council even where that evidence was not before the ALJ. *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993). Pursuant to the provisions of 42 U.S.C. § 405 (g), a case may be remanded to the Secretary if the new evidence submitted is material, and there is good cause for the failure to incorporate it into the record. In order to be “material,” the new evidence must be probative of the claimant’s condition as it existed during the relevant time period -- on or before the administrative hearing. *Sanchez v. Secretary of Health and Human Services*, 812 F.2d 509, 511 (9th Cir. 1987). In addition, the claimant must prove to the reviewing court’s satisfaction that there exists a “reasonable possibility that the new evidence would have changed the outcome of the Secretary’s determination had it been before him.” *Booz v. Secretary of Health and Human Services*, 734 F.2d 1378, 1380 (9th Cir. 1984). The good cause requirement is satisfied if the claimant could not have obtained the medical evidence at the time of the administrative proceeding, even though the evidence surfaces after the Secretary’s final decision. *See Embry v. Bowen*, 849 F.2d 418, 423-24 (9th Cir. 1988); *Booz, supra*, 734 F.2d at 1380.

1 Here, Plaintiff has not established good cause. Plaintiff was seen by Dr. Merliss on
2 December 5, 2007 and March 18, 2008, both of which occurred before the hearing date on May
3 14, 2008. AR 25,197, 193, 219. Certainly, an assessment could have been performed and
4 provided to the ALJ before the issuance of the decision. Instead, Plaintiff waited until after the
5 hearing date and toward the end of the appeal period to obtain the physician's evaluation. Under
6 these circumstances, the good cause requirement is not satisfied. Plaintiff could have obtained
7 the medical evidence at the time of the administrative proceeding and he offers no explanation
8 why the evidence was not presented earlier. *See Embry v. Bowen*, 849 F.2d 418, 423-24 (9th Cir.
9 1988); *Booz, supra*, 734 F.2d at 1380; *Allen v. Secretary of Health*, 726 F.2d 1470, 1473 (9th Cir.
10 1984). "A claimant does not meet the good cause requirement simply by obtaining a more
11 favorable report from an expert witness once the claim is denied." *Clem v. Sullivan*, 894 F. 2d
12 328, 332 (9th Cir. 1990) citing *Key v. Heckler*, 754 F. 2d 1545, 1551 (9th Cir. 1985).

13 Finally, Plaintiff has not established that the new evidence is material because Dr.
14 Merliss' report is inconsistent with the evidence submitted by Plaintiff's treating physicians. For
15 example, Dr. Merliss relies on Plaintiff's hip pain for several of the limitations he imposes. AR
16 212-213. However, Dr. Rehman's initial examination notes that the internal and external
17 rotation of Plaintiff's hips were normal, and that Plaintiff's weak hand grip appeared to be more
18 from a lack of effort rather than any underlying muscle weakness. AR 191, 199. Moreover, x-
19 rays of Plaintiff's hips taken on January 30, 2008 were also normal. AR. 195. Dr. Merliss'
20 report is also inconsistent with Dr. Kumar's orthopedic evaluation, which revealed that Plaintiff
21 exhibited normal range of motion and muscle strength in his hips, and Plaintiff exhibited no
22 functional limitations. AR 151. Finally, Dr. Cullen's physical examination, on April 14, 2008,
23 revealed that rotation and "flexion" in Plaintiff's hips were normal and painless. AR 210.

24 In light of the above, Plaintiff has not demonstrated that the new report submitted by Dr.
25 Merliss is material when taken in context of the entire record because he failed to establish that
26 the information would have effected the ALJ's decision. *See Embry v. Bowen*, 849 F.2d 418,
27 423-24 (9th Cir. 1988); *Booz*, 734 F.2d at 1380. Therefore, the Appeals Council's decision to
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uphold the ALJ's decision regarding this issue was proper. *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993).

B. Plaintiff's Subjective Pain Limitations

Plaintiff argues that the ALJ improperly discredited his testimony regarding Plaintiff's pain in his shoulder, knee, and back. (Doc. 14 at 6-9). However, the ALJ did not make a credibility determination regarding Plaintiff's physical conditions because the ALJ found these impairments were not severe at step two. AR 20-21. Therefore, an analysis of these impairments required no further evaluation and Plaintiff's credibility arguments regarding his complaints of pain are misplaced.

At step two of the sequential evaluation process, the ALJ must determine whether Plaintiff suffers from a "severe" impairment. The regulations define a non-severe impairment as one that does not significantly limit [the claimant's] physical and mental ability to do basic work activities. An impairment is not severe "if the evidence establishes a slight abnormality that has 'no more than a minimal effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F. 3d 1273, 1290 (9th Cir. 1996). To satisfy step two's requirement of a severe impairment, the claimant must prove the existence of a physical or mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings; the claimant's own statement of symptoms alone will not suffice. 20 C.F.R. §§ 404.1508; 416.908. The effects of all symptoms must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptoms. 20 C.F.R. §§ 404.1529, 416.929. An overly stringent application of the severity requirement violates the statute by denying benefits to claimants who do meet the statutory definition of disabled. *Corrao v. Shalala*, 20 F.3d 943, 949 (9th Cir. 1994).

The step two inquiry is a *de minimis* screening device to dispose of groundless or frivolous claims. *Bowen v. Yuckert*, 482 U.S. 137, 153-154 (1987). Further, the ALJ must consider the combined effect of all of the claimant's impairments on his ability to function, without regard to whether each alone was sufficiently severe. 42 U.S.C. § 423(d)(2)(B). The combined effect "shall be considered throughout the disability determination process. *Id.* The adjudicator's role at step two is further explained by SSR 85-28:

1 A determination that an impairment(s) is not severe requires a careful evaluation of the
2 medical findings which describe the impairment(s) and an informed judgment about its
3 (their) limiting effects on the individual's physical and mental ability(ies) to perform basic
4 work activities; thus, an assessment of function is inherent in the medical evaluation
5 process itself. At the second step of sequential evaluation, then, medical evidence alone is
6 evaluated in order to assess the effects of the impairment(s) on ability to do basic work
7 activities.

8 SSR 85-28.

9 Here, the ALJ adequately evaluated the medical evidence regarding Plaintiff's complaints
10 of pain in his shoulder, knee and back and properly concluded that these were not severe
11 impairments. Specifically, the ALJ relied on various physical examinations, radiological tests
12 and nerve conduction studies that were normal and he also properly noted there was no joint
13 pathology, neurological deficits, scoliosis or spinal deformity. AR 20-21. The evidence relied on
14 by the ALJ supports his finding that Plaintiff's musculoskeletal problems did not impede
15 Plaintiff's basic work activities. Therefore, the ALJ properly considered Plaintiff's complaints
16 when determining that they were not severe within the meaning of the Regulations. *See Smolen*,
17 80 F. 3d at 1289-1290; *Bowen*, 482 U.S. at 153-154. Consequently, Plaintiff's argument that the
18 ALJ improperly discredited his testimony related to his alleged physical ailments is without
19 merit.

20 **C. Evaluation of Medical and Psychological Evidence**

21 As a preliminary matter, Plaintiff argues that the ALJ credited the non-examining state
22 medical consultants and disregarded the opinions of Plaintiff's examining physicians without
23 adequate explanation. Specifically, Plaintiff contends that the ALJ improperly rejected the
24 physician opinions regarding Plaintiff's physical impairments. In support of this argument,
25 Plaintiff merely states that his treating physicians noted that he suffered severe back, hip, and arm
26 pain, as well as tenderness in his spine. Plaintiff asserts that had the ALJ considered these
27 opinions, he would have concluded that Plaintiff suffered from disabling pain. (Doc. 14 at 11).
28 However, other than this broad declaration, Plaintiff failed to identify any doctor's findings or
reports and did not articulate any specific support for this proposition. Therefore, the Court is
unpersuaded by this boilerplate argument as it lacks evidentiary support and appropriate analysis.
As noted above, the ALJ properly evaluated the medical evidence of Plaintiff's physical

1 impairments and relied on Plaintiff's examining and treating physicians reports at step two of the
2 sequential evaluation.

3 Plaintiff also argues that the ALJ failed to include psychological limitations imposed by
4 the Dr. Cormier, the psychological consultive examiner. (Doc. 14 at 12.) Specifically, Plaintiff
5 contends the ALJ gave Dr. Cormier's evaluation "significant weight," but the ALJ only adopted
6 some of Dr. Cormier's findings and failed to provide specific and legitimate reasons for failing
7 to address the other limitations. (Doc. 14 at 13.) The Court agrees.

8 At the fourth step in the sequential process, the ALJ determines whether the impairment
9 prevents the claimant from performing his or her past work, *i.e.*, whether the claimant has
10 sufficient residual functional capacity to tolerate the demands of any past relevant work. 20
11 C.F.R. §§ 404.1520(a); 416.920(a). A claimant's residual functional capacity is the most he can
12 do despite his limitations. 20 C.F.R. § 4040.1545(a). In determining a claimant's residual
13 functional capacity, an ALJ must assess all the evidence to determine what capacity the claimant
14 has for work despite his or her impairments. 20 C.F.R. §§ 404.1520(a); 416.920(a).

15 In this case, the ALJ considered many of the psychological limitations imposed by Dr.
16 Cormier, the examining psychologist, and Drs. Paxton and Schrift, the non-examining state
17 agency physicians who assessed Plaintiff's psychological conditions. AR 23-24, 154-163, 166-
18 179. The ALJ noted that he found Dr. Cormier's report persuasive, consistent, and well
19 supported by objective findings and accorded it significant weight. AR 23. The ALJ also found
20 that state agency medical consultants noted moderate limitations in Plaintiff's ability to
21 understand, remember, and carry out detailed instructions and interact appropriately with the
22 general public. *Id.* The ALJ noted that the state agency opinions showed consistency in the
23 record and also were persuasive. *Id.* After considering all of the evidence, the ALJ concluded
24 as follows:

25 The substantial evidence of record as noted above, confirms that the claimant continues to
26 have problems due to anger issues, borderline functioning, and depression. Despite these
27 conditions, opinions of examining and non-examining practitioners support findings
28 regarding the claimant's ability to perform work-related activities. Even with the
limitations that the claimant's conditions impose, the record supports that the claimant
has the ability to perform work activity at all exertional levels. He is restricted to simple

1 repetitive unskilled work tasks that have no frequent dealings with the public, or frequent
2 interaction with co-workers.

3 AR 23. A close reading of Dr. Cormier's report demonstrates that the ALJ did not
4 address all of Dr. Cormier's limitations completely. For example, the ALJ correctly noted Dr.
5 Cormier "found no psychological condition that would impair the ability to maintain regular
6 attendance or perform simplistic work activities on a consistent basis." *Id.* However, Dr.
7 Cormier also noted that Plaintiff's "ability to complete a normal workday or workweek without
8 interruption may be significantly impaired at times because of [Plaintiff's] borderline intellectual
9 functioning, learning disabilities, and cannabis induced anxiety." AR 159. Moreover, Dr.
10 Cormier found that Plaintiff's history and response to stress of the examination suggested that he
11 had a "moderate impairment regarding his ability to deal with the typical stress he may encounter
12 in a competitive work setting." AR 159. Similarly, Dr. Cormier also noted that Plaintiff
13 demonstrated obvious impairments regarding sustained concentration, persistence, and pace.
14 Finally, Dr. Cormier also found that Plaintiff's history of supervisory conflict indicates that an
15 "associate special" or additional supervision may be required. AR 159.

16 Although the ALJ limited Plaintiff's RFC to unskilled work tasks that have no frequent
17 dealings with the public or co-workers, the ALJ ignored Plaintiff's limitations with regard to his
18 ability to deal with stress and manage his anxiety, his supervision issues, as well as his
19 impairments regarding concentration, persistence and pace. The ALJ did not consider these
20 limitations in his RFC, nor did he give reasons for rejecting them. Therefore, the Court will
21 remand the matter so the ALJ can either incorporate these limitations into Plaintiff's RFC or give
22 reasons for rejecting them.

23 ***D. Mental Retardation***

24 Plaintiff argues that if the ALJ properly considered Dr. Cormier's report then Plaintiff's
25 mental functioning would meet listing diagnosis 12.05(c) which defines mental retardation.
26 However, the ALJ clearly discusses Plaintiff's IQ scores (AR 23), and none of these scores meet
27 any of the requirements under 12.05(c) which provides as follows :

28 [m]ental retardation refers to a significantly subaverage general intellectual functioning
with deficits in adaptive behavior initially manifested during the developmental period

(before age 22).” *Id.* Subsection C requires: first, that a plaintiff have a valid verbal, performance, or full scale IQ of 60 to 70, and second, a physical or other mental impairment imposing additional and significant work-related limitation of function.

Id. In this instance, the ALJ clearly considered Plaintiff’s IQ scores and properly found that Plaintiff did not have the combination of impairments required by Listing 12.05(c) because neither his verbal IQ of 71, performance IQ of 76, or his full scale IQ of 71 meets the listing requirements. AR 157.

E. ALJ’s Use of the Grids

Plaintiff argues that the ALJ’s use of the grids at step five was inappropriate in light of Plaintiff’s non-exertional limitations. (Doc. 14 at 15-16). Defendant argues that the ALJ’s finding at step five was supported by substantial evidence. (Doc. 15 at 9-10).

The claimant has the initial burden of proving the existence of a disability within the meaning of the Social Security Act. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). The claimant establishes a prima facie case of disability by showing that a physical or mental impairment prevents him or her from engaging in his or her previous occupation. *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). However, once the claimant establishes a prima facie case of disability, the burden of going forward with the evidence shifts to the Secretary. *Hammock v. Bowen*, 867 F.2d 1209 (9th Cir. 1989). The Secretary bears the burden of establishing the existence of alternative jobs available to the claimant, given his or her age, education, and medical-vocational background. In an appropriate case, the Secretary may meet this burden through application of the medical-vocational guidelines set forth in the regulations.⁵ See 20 C.F.R. Pt. 404, Subpt. P, App. 2 (“Appendix 2”); *Heckler v. Campbell*, 461 U.S. 458 (1983); *Odle v. Heckler*, 707 F.2d 439, 440 (9th Cir. 1983). If the guidelines do not accurately describe a claimant’s limitations, the Secretary may not rely on them alone to show availability of jobs for the claimant. *Desrosiers v. Secretary*, 846 F.2d 573 (9th Cir. 1988).

⁵ For any given combination of factors (residual functional capacity, age, education, and work experience), the guidelines direct a conclusion of disability or nondisability when they accurately describe a claimant’s particular limitations.

1 When the grids do not match the claimant's qualifications, the ALJ can either (1) use the
2 grids as a framework and make a determination of what work exists that the claimant can
3 perform, or (2) rely on a vocational expert when the claimant has significant non-exertional
4 limitations. *Hoopai v. Asture*, 499 F.3d 1071 (9th Cir. 2007). However, the mere allegation of
5 the presence of a non-exertional impairment is not sufficient to preclude application of the
6 guidelines. Such non-exertional impairment must be found to significantly limit the range of
7 work permitted by a claimant's exertional limitations before the Secretary will be required to
8 obtain expert vocational testimony regarding the availability of other work. *See, e.g., Polny v.*
9 *Bowen*, 864 F.2d 661 (9th Cir. 1988); *Burkhart v. Bowen*, 856 F.2d 1335 (9th Cir. 1988); *Razey*
10 *v. Heckler*, 785 F.2d 1426, 1430 (9th Cir. 1986) (modified 794 F.2d 1348 (1986)); and *Perminter*
11 *v. Heckler*, 765 F.2d 870 (9th Cir. 1985).

12 As to the application the grids, the ALJ stated:

13 The undersigned notes the Social Security Ruling 85-15 provides a basis for
14 conclusion that the occupational base would not be significantly eroded by
15 [Plaintiff's] non-exertional limitations which, as noted above, consist of a
16 limitation to simple routine unskilled work that does not involve frequent dealing
17 with the public. Social Security Ruling 85-15 states that the basic demands of
18 unskilled work are defined as understanding, remembering, and carrying out
19 simple instructions, responding appropriately to supervision, co-workers, and
20 usual work situations, dealing with changes in a routine work setting, and making
21 judgments that are commensurate with the functions of unskilled work, i.e. simple
22 work-related decisions, [*sic*] thus borderline intellectual functioning and
23 [Plaintiff's] other emotional difficulties with depression and anger would not have
24 a significant impact on his ability to perform a broad spectrum of unskilled work.
25 Accordingly, the undersigned finds that [Plaintiff's] non-exertional limitations do
26 not significantly erode the occupational base.

27 AR 24-25.

28 Here, the ALJ's reliance on the grids for a non-disability determination in light of
Plaintiff's non-exertional limitations was improper. The ALJ found that Plaintiff's borderline
intellectual functioning, depression, anger, and ability to understand simple instructions did not
significantly impact Plaintiff's ability to perform unskilled work, resulting in finding of "not
disabled" under the grids. AR 24-25. However, as previously noted, the ALJ did not address
Plaintiff's other non exertional limitations such as his repeated history of supervisory conflict and
moderate impairments in dealing with work related stress. These are factors which potentially

could limit Plaintiff's occupational base, which makes the ALJ's conclusion inconsistent with the language of SSR 85-15. As such, the case will be remanded so that the ALJ can address these limitations and take the testimony of a vocational expert if the ALJ adopts these limitations. *See Cooper v. Sullivan*, 880 F.2d 1152, 1555 (9th cir. 1989) (citing 20 C.F.R. Part 404, Subpart P, Appendix 2, § 200.00 (e)(1) ". . . where a claimant suffers solely from a nonexertional impairment, the grids do not resolve the question,[] other testimony is required."); *Poly*, 864 F.2d at 663-664 (grids inapplicable because, although claimant was "capable of performing a wide range of jobs," he could not perform ones that were "highly stressful," that "require[d] compression of complex instruction," or "dealing with the public"); *Burkhart*, 856 F.2d at 1341 & n. 4 (grids inapplicable because they did not account for claimant's need to avoid stressful environments, his inability to regularly use his hands, or his vision problems); *Holohan v. Massanari*, 246 F.3d 1195, 1208-1209 (9th Cir. 2001) (ALJ committed legal error by relying on grids where ALJ found that claimant had no severe physical impairments and her only severe impairments were psychiatric).

Defendant's argument that unskilled work "ordinarily involves dealing primarily with objects rather than data or people" (quoting SSR 85-15) is unpersuasive. As noted by the ALJ, SSR 85-15 clearly indicates that responding appropriately to supervisors and dealing with changes in the work environment are factors the ALJ must consider when determining whether the occupational base is eroded by Plaintiff's non-exertional impairments.⁶

⁶ Social Security Ruling 85-15 discusses mental impairments and stress as follows:

Where a person's only impairment is mental, is not of listing severity, but does prevent the person from meeting the mental demands of past relevant work and prevents transferability of acquired work skills, the final consideration is whether the person can be expected to perform unskilled work. The basic mental demands of competitive, remunerative, unskilled work included the ability (on a substantial basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, co-workers, and usual work situations; and to deal with a changes in a routine work setting. A substantial loss of ability to meet any of these basic work-related activities would severely limit the potential occupational base.

Determining whether these individuals will be able to adapt to the demands or "stress" of the workplace is often extremely difficult. This section is not intended to set out any presumptive limitations for disorders, but to emphasize the importance fo thoroughness in evaluation in an individualized basis.

Moreover, Defendant's reliance on *Summers v. Commissioner of Social Security*, 2009 WL 2051653 (E.D. Cal. 2009) is misplaced. In *Summers*, the Court held that Plaintiff's non-exertional limitation of infrequent public or co-worker contact did not preclude the ALJ from using the Grids because Plaintiff was physically capable of light work and her non-exertional limitations did not affect her ability perform unskilled light work. *Summers*, 2009 WL 2051653 at *23-24. Here, the ALJ imposed limitations including infrequent contact with co-workers or the public. However, Plaintiff may have a number of other non-exertional limitations that would preclude the use of the grids including his difficulty accepting supervision and his limited ability to handle stress, manage his anxiety, and deal effectively with changes in the job environment.

Based on the above, the Court will remand the case so that the ALJ can adequately consider Dr. Cormier's report, determine whether he will adopt the limitations it contains, and obtain vocational expert testimony if necessary. Furthermore, the Court notes that Plaintiff's last psychological examination occurred over five years ago. On remand, the ALJ should consider obtaining an updated psychological examination to determine the current status of Plaintiff's psychological condition.

REMAND

Section 405(g) of Title 42 of the United States Code provides: "the court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." In Social Security cases, the decision to remand to the Commissioner for further proceedings or

The reaction to the demands of work (stress) is highly individualized, and mental illness is characterized by adverse responses to seemingly trivial circumstances. The mentally impaired may cease to function effectively when facing such demands as getting to work regularly, having their performance supervised, and remaining in the workplace for a full day. Thus, the mentally impaired may have difficulty meeting the requirements of even so-called "low-stress" jobs.

Because the responses to the demands of work is highly individualized, the skill level of a position is not necessarily related to the difficulty an individual will have in meeting the demands of the job. A claimant's condition may make performance of an unskilled job as difficult as an objectively more demanding job.

SSR 85-15.

1 simply to award benefits is within the discretion of the court. *McAllister v. Sullivan*, 888 F.2d
2 599, 603 (9th Cir. 1989). “If additional proceedings can remedy defects in the original
3 administrative proceedings, a Social Security case should be remanded. Where, however, a
4 rehearing would simply delay receipt of benefits, reversal and an award of benefits is
5 appropriate.” *Id.* (citation omitted); *see also Varney v. Secretary of Health & Human Serv.*, 859
6 F.2d 1396, 1399 (9th Cir.1988) (“Generally, we direct the award of benefits in cases where no
7 useful purpose would be served by further administrative proceedings, or where the record has
8 been thoroughly developed.”).

9 In this case, the Court finds that remand for further proceedings is proper to allow the
10 ALJ to properly review all of the psychological evidence as outlined above and acquire the
11 services of a vocational expert if necessary.

12 **CONCLUSION**

13 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by
14 substantial evidence and is therefore REVERSED and the case is REMANDED to the ALJ for
15 further proceedings consistent with this opinion. The Clerk of this Court is DIRECTED to enter
16 judgment in favor of Loreto G. Gonzales and against Defendant Michael J. Astrue,
17 Commissioner of Social Security.

18
19
20 IT IS SO ORDERED.

21 **Dated: October 28, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE